

DEPARTMENT OF STATE REVENUE**LETTERS OF FINDINGS, NUMBER 94-0706
CONTROLLED SUBSTANCE EXCISE TAX
For the Period: 1994**

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ISSUE**I. Controlled Substance Excise Tax – Liability**

Authority: Ind. Code § 6-7-3-5;
Ind. Code § 6-7-3-8;
Ind. Code § 6-7-3-9;
State of Indiana v. Burnett, et al, Monroe County Circuit Court, Cause Number 53C069211CF00612, decided November 10, 1993;
Cliff v. Indiana Department of State Revenue, 660 N.E.2d 310 (Ind. 1995).

The taxpayers protest the assessment of the Controlled Substance Excise Tax.

STATEMENT OF FACTS

On August 20, 1994, the taxpayers, husband and wife at the time, were arrested by the Vanderburgh County Sheriff's Department and charged with possession of and dealing in various controlled substances. On September 6, 1994, the Indiana Department of Revenue issued a jeopardy assessment against the taxpayers for payment of the Controlled Substance Excise Tax (CSET). In lieu of an administrative hearing, a telephone conference was held on November 22, 1999, between the taxpayers' representative and a representative of the Indiana Department of Revenue.

I. Controlled Substance Excise Tax – Liability**DISCUSSION**

In Indiana, the manufacture, possession, or delivery of controlled substances is taxable. Ind. Code § 6-7-3-5. Since no taxes were paid on the controlled substances in the taxpayers' possession, the Department of Revenue assessed the tax against the taxpayers and demanded

payment. In the their protest letter, submitted by their prior representative, the taxpayers argue that the CSET is unconstitutional. The taxpayers rely on a Monroe County Circuit Court case, State of Indiana v. Burnette, et al., Cause Number 53C069211CF00612, decided November 10, 1993. In that case, the Circuit Court found the CSET to be unconstitutional as a violation of the taxpayer's right against compulsory self-incrimination as found in the Fifth Amendment to the United States Constitution. The Circuit Court found that the safeguards against self-incrimination contained in the CSET legislation (Ind. Code § 6-7-3-8 and § 6-7-3-9) were not sufficient to protect a payer of the CSET from incriminating himself in a subsequent criminal prosecution. In a case decided after Burnette, the Indiana Supreme Court determined that the CSET poses "no real and appreciable risk of self-incrimination in violation of the Fifth Amendment." Cliff v. Indiana Department of State Revenue, 660 N.E.2d 310 (Ind. 1995).

The current representative of the taxpayers stated during the telephone conference that his clients had an agreement with the Vanderburgh County Prosecutor's Office that they would not be prosecuted for any drug-related offenses. According to the representative, this was because one of the taxpayers had been a confidential drug informant. This information was presented for the first time during the telephone conference. No supporting documentation has been submitted by the representative. A representative of the Vanderburgh County Prosecutor's Office stated that he believed that the criminal charges against the taxpayers were dropped due to double jeopardy concerns. Even if there was an agreement between the Vanderburgh Count Prosecutor's Office and the taxpayers, the State of Indiana would not be bound by it since it was not a party to the agreement.

FINDING

The taxpayers' protest is denied. The Controlled Substance Excise Tax was properly imposed in this case.